

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the Local Competition Provisions of the Telecommunications Act Of 1996)	CC Docket No. 96-98
)	
)	
Petition for Declaratory Ruling of NuVox, Inc.)	DA 02-1302
_____)	

**COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA),¹ through the undersigned and pursuant to Federal Communications Commission (FCC) Rules 1.415 and 1.419,² hereby submits its comments in response to the FCC's *Public Notice*³ regarding the Petition for Declaratory Ruling of NuVox, Inc. in the above-captioned matter. In its Petition, NuVox, Inc. (NuVox) claims that the FCC's June 2, 2000 *Supplemental Order Clarification* in CC Docket No. 96-98 does not explicitly set forth procedures that must be followed by an incumbent local exchange carrier (ILEC) when it requests an audit to verify a requesting carrier's compliance with the local usage

¹ USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA represents over 670 carrier members that provide a full array of voice, data and video services over wireline and wireless networks. USTA members support the concept of universal service, and its carrier members are leaders in the provision of advanced telecommunications services to American and international markets.

² 47 C.F.R. §§ 1.415 and 1.419.

³ Petition for Declaratory Ruling of NuVox, Inc., *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, DA 02-1302, Public Notice (rel. June 3, 2002) (Petition).

requirements for converting special access circuits to enhanced extended links (EELs). To be clear, the Petition was filed in response to the purported improper actions of one ILEC, BellSouth Telecommunications, Inc. (BellSouth).

USTA asserts that NuVox's claim does not necessitate the issuance of a declaratory ruling, which would impact many carriers, particularly when the claim does not allege that more than one ILEC has acted improperly with regard to such local usage audits. With no other similar complaints before the FCC, NuVox's Petition alone does not demonstrate prevalent harm, or the risk of such harm, from the alleged misconduct of one ILEC, which would justify a declaratory ruling that would impact many ILECs. Further, NuVox does not provide any support, other than the assertions of its own individualized experiences with BellSouth, that there is uncertainty associated with the FCC's *Supplemental Order Clarification*.

NuVox argues that a declaratory ruling following its recommendations "will promote local competition by ensuring that CLECs have access to EELs from ILECs, as contemplated by . . . [the FCC's] orders."⁴ This result simply does not follow the demanded action. NuVox's factual allegations of BellSouth's purported misconduct do not signify that competitive local exchange carriers (CLECs) do not have access to ILECs' EELs. Nor are such allegations indicative of any uncertainty resulting from the FCC's *Supplemental Order Clarification* on how and when ILECs may conduct verifying audits related to conversions of special access circuits to EELs. In fact, the *Supplemental Order Clarification* incorporates the broad agreement among ILECs and CLECs on auditing procedures.⁵ As such, a declaratory ruling is inappropriate based

⁴ Petition at 2-3.

⁵ The FCC states in its *Supplemental Order Clarification* that ILECs "requesting an audit should hire and pay for an independent auditor to perform the audit;" that ILECs "must provide at least 30 days written notice to a carrier . . . that it will conduct an audit;" that ILECs "may not conduct more than one audit of the carrier in any calendar year unless an incumbent LEC finds non-compliance;" and that ILECs "should send a copy of the [audit] notice to the Commission." *Implementation of the Local Competition*

on NuVox's individualized assertions in the Petition. If any action is warranted, it should come in response to a section 208 complaint.⁶ Yet, to USTA's knowledge, such a complaint has not been filed.

With one exception, USTA is not addressing the substantive claims in the NuVox Petition because, as noted previously, USTA believes these claims should not be addressed in a declaratory ruling proceeding. However, USTA must comment on one particular substantive matter in the Petition – the claim that auditors who have spent a significant amount of their careers working for an ILEC do not qualify as independent auditors when they are conducting an audit pursuant to the FCC's *Supplemental Order Clarification*.⁷ The FCC should not prohibit individuals with an ILEC employment history from serving as independent auditors. Certainly the FCC should presume, unless specific evidence is produced demonstrating the contrary, that an auditor retained to perform an audit pursuant to the *Supplement Order Clarification* will do so professionally and with integrity. No prior restraint on the utilization of any class of individual for the purpose of conducting audits should be imposed on the basis of the NuVox Petition. Under any circumstances, such a class-based restraint would raise serious legal issues. As a practical matter, were the FCC to declare that auditors with prior ILEC employment experience are disqualified, finding that they are not independent, the pool of experienced and qualified auditors from which an ILEC could select would be significantly and unreasonably diminished.

Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *Supplemental Order Clarification*, 15 FCC Rcd 9587, 9603-9604, ¶31 (2000).

⁶ See 47 U.S.C. §208.

⁷ Petition at 7.

In sum, it is not necessary for the FCC to issue a declaratory ruling to make explicit what its *Supplemental Order Clarification* already makes clear. Nor is it necessary to resolve an individual complaint through a declaratory ruling.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

By: /s/ Robin E. Tuttle

Lawrence E. Sarjeant
Indra Sehdev Chalk
Michael T. McMenamin
Robin E. Tuttle

Its Attorneys

1401 H Street, NW, Suite 600
Washington, D.C. 20005
(202) 326-7300

July 3, 2002